

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

KEITH ROSARIO,)	
)	
Plaintiff,)	2:21-cv-208
)	
vs.)	
)	District Judge Robert J. Colville
WESTMORELAND COUNTY, PA;)	Magistrate Judge Maureen P. Kelly
WESTMORELAND COUNTY)	
COMMISSIONER; WESTMORELAND)	Re: ECF No. 4
COUNTY PRISON; WARDEN WALTON;)	
DEPUTY WARDEN LOWTHER; DEPUTY)	
WARDEN SCHWARZ; LIEUTENANT)	
TOMASELLO; LIEUTENANT WOLFF;)	
SERGEANT GILLETTE; SERGEANT)	
BRADLEY; and JOHN DOE 1-6,)	
)	
Defendants.)	

ORDER OF COURT

Before the Court is the Honorable Maureen P. Kelly's May 14, 2021 Report and Recommendation (ECF No. 10), which recommends that Plaintiff's Complaint (ECF No. 4) be dismissed sua sponte pursuant to 28 U.S.C. § 1915(e)(2)(B)(ii), and which further recommends: (1) that all claims against Defendant Westmoreland County Prison be dismissed with prejudice because they are duplicative of his claims against Defendant Westmoreland County, PA; and (2) that all other claims be dismissed without prejudice to the filing of an amended complaint. Objections to Judge Kelly's Report and Recommendation were due by June 1, 2021. No objections were filed, and the matter is now ripe for disposition.

With respect to dispositive matters, the reviewing district court must make a de novo determination of those portions of the magistrate judge's report and recommendation to which objections are made. 28 U.S.C. § 636(b)(1)(B)-(C); Fed. R. Civ. P. 72(b)(3). "The district judge

may accept, reject, or modify the recommended disposition; receive further evidence; or return the matter to the magistrate judge with instructions.” Fed. R. Civ. P. 72(b)(3). The United States Court of Appeals for the Third Circuit has explained that, “even absent objections to the report and recommendation, a district court should ‘afford some level of review to dispositive legal issues raised by the report,’” and has “described this level of review as ‘reasoned consideration.’” *Equal Employment Opportunity Comm’n v. City of Long Branch*, 866 F.3d 93, 100 (3d Cir. 2017) (quoting *Henderson v. Carlson*, 812 F.2d 874, 878 (3d Cir. 1987)).

Upon consideration of Judge Kelly’s May 14, 2021 Report and Recommendation and upon review of the record in this matter, it is hereby ORDERED as follows:

The Court accepts and adopts Judge Kelly’s Report and Recommendation in its entirety as the opinion of the Court. Plaintiff’s Complaint (ECF No. 4) is dismissed sua sponte pursuant to 28 U.S.C. § 1915(e)(2)(B)(ii) for failure to state a claim on which relief may be granted. Plaintiff’s claims against Defendant Westmoreland County Prison are dismissed with prejudice because they are duplicative of his claims against Defendant Westmoreland County, PA. All other claims are dismissed without prejudice to the filing of an amended complaint addressing the pleading deficiencies identified in Judge Kelly’s May 14, 2021 Report and Recommendation. To the extent that Plaintiff elects to file an amended complaint, the same shall be filed by July 7, 2021.

BY THE COURT:

s/Robert J. Colville
Robert J. Colville
United States District Judge

DATED: June 8, 2021

cc: Honorable Judge Maureen P. Kelly
United States Magistrate Judge

Keith Rosario
MB-4878
SCI Albion
10745 Route 18
Albion, PA 16475